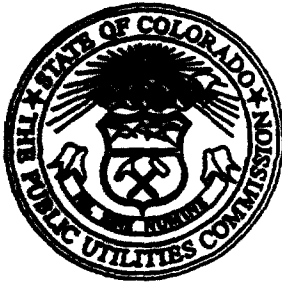


6. This Order is effective on its Mailed Date.

B. ADOPTED IN SPECIAL OPEN MEETING March 29, 1996.

(SEAL)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT J. HIX

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CHRISTINE E. M. ALVAREZ

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VINCENT MAJKOWSKI

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Commissioners

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "Bruce N. Smith".

Bruce N. Smith  
Director

**THE  
PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF COLORADO**

**RULES FOR THE RESALE  
OF TELECOMMUNICATIONS EXCHANGE SERVICES**

**4 CCR 723-40**

**BASIS, PURPOSE, AND STATUTORY AUTHORITY.**

The basis and purpose of these rules is to establish regulations regarding the resale of telecommunications exchange services. These rules ensure the non-discriminatory availability of services for resale in a manner that allows resellers to provide service to their end-users in a way that enhances competition.

The rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law and there are no duplicating or overlapping rules.

These rules are issued pursuant to Sections 40-2-108, 40-15-108, 40-15-502 (5) (b), and 40-15-503 (2) (b) (IV) C.R.S.

**RULE 4 CCR 723-40-1.      APPLICABILITY.**

These rules are applicable to all certified telecommunications providers that provide telecommunications exchange service in the state of Colorado.

**RULE 4 CCR 723-40-2.      DEFINITIONS.**

The meaning of terms used within these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. As used in these rules, unless the context indicates otherwise, the following definitions shall apply:

723-40-2.1      Facilities-based telecommunications provider: A certified provider of telecommunications exchange service who owns facilities.

723-40-2.2      Incumbent facilities-based telecommunications provider: A facilities-based telecommunications provider that, on February 8, 1996, provided telephone exchange service in Colorado and either (a) on such date was a member of the exchange carrier association or (b) is a person or entity that became a successor or assign of a member described in clause (a). If a provider has held a Certificate of Public Convenience and Necessity to offer local exchange service in Colorado for three years, such provider shall be considered an incumbent unless the Commission determines that such designation is not in the public interest. A facilities-based telecommunications provider which has not held a Certificate of Public Convenience and Necessity to offer local exchange service in Colorado for three years may also be considered an incumbent telecommunication provider if: (a) such provider occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by a provider described above; (b) such provider has substantially replaced an incumbent facilities-based telecommunication provider described above; or, (c) the

Commission has otherwise determined that such designation is in the public interest.

723-40-2.3      Operational support:      Mechanisms used to facilitate the resale of telecommunications services including, but not limited to, the taking of service and repair orders, and the exchange of billing data and end-user account data in a manner consistent with Federal and Colorado law, through the mutual exchange of information between facilities-based telecommunications providers and resellers. This information may be exchanged in a variety of ways which may include, but is not limited to, electronic interfaces, technical interfaces, or access to databases.

723-40-2.4      Reseller:      A certified provider of telecommunications services who purchases, pursuant to Commission-approved contract or effective tariff, telecommunications services from a facilities-based telecommunications provider and then offers the services, either by themselves as separate tariff offerings or in combination with other services, to an end-user.

723-40-2.5      Rural telecommunications provider:      A telecommunications provider which:

(1) serves only rural exchanges of ten thousand or fewer access lines;

(2) provides common carrier service to any local exchange carrier study area that does not include either (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (b) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(3) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(4) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or,

(5) had less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

723-40-2.6      Telecommunications:      The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

723-40-2.7      Telecommunications exchange service: Service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area, operated to furnish subscribers with intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge.

723-40-2.8      Telecommunications provider: Any provider of telecommunications exchange services.

723-40-2.9      Telecommunications service: The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**RULE 4 CCR 723-40-3.      REGULATION OF FACILITIES-BASED TELECOMMUNICATIONS PROVIDERS.**

723-40-3.1      To encourage the development of balanced competition, all facilities-based telecommunications providers shall neither prohibit nor impose unreasonable or discriminatory

conditions or limitations on, the resale of their regulated telecommunications services.

723-40-3.2 Facilities-based telecommunications providers shall not be required to modify their Commission-established local calling areas for the purpose of accommodating a reseller.

723-40-3.3 Operational Support

723-40-3.3.1 Each facilities-based telecommunications provider shall offer, in a non-discriminatory manner, pursuant to contract or tariff, the operational support necessary to enable each reseller, certified within the facilities-based telecommunications provider's service territory, the opportunity to provide the reseller's end-users the same quality of service, consistent with 4 CCR 723-2, as is available to the facilities-based telecommunications provider's end-users.

723-40-3.3.2 Such contracts shall be approved by the Commission and available for review pursuant to Commission order.

723-40-3.4 A facilities-based telecommunications provider may require a deposit from a reseller, pursuant to a Commission approved tariff filing,. The tariff shall specify, at a minimum, the amount of the deposit, the circumstances under which the deposit shall be required, when the deposit shall be returned, and the terms and conditions of the forfeiture of the deposit. Such deposit shall be in an amount sufficient to recover the reasonable costs borne by the facilities-based telecommunications provider in the event the reseller (1) abandons, discontinues, or curtails telecommunications exchange service without Commission approval or (2) fails to pay the

facilities-based telecommunications provider for services rendered.

723-40-3.5 In the event a reseller abandons, discontinues, or curtails telecommunications exchange service without Commission approval, the facilities-based telecommunications provider shall (1) notify each customer of the reseller's abandonment, discontinuance, or curtailment of service and of the customer's option to receive services directly from the facilities-based telecommunications provider or switch to another provider, and, (2) provide, at a minimum, exchange telecommunications service to each of the reseller's former customers pursuant to the facilities-based telecommunications provider's rates, terms, and conditions, unless the customer requests service from another provider.

723-40-3.6 Subject to Commission approval, an incumbent facilities-based telecommunications provider shall charge resellers a price equal to the retail price the provider charges end-users adjusted for any marketing, billing, collection, and other costs that will be avoided by the incumbent facilities-based telecommunications provider. For purposes of this rule, the price charged to resellers shall also reflect any package discounts the incumbent facilities-based telecommunications provider offers to its end-users for a combination of products if the resold combination of products purchased is identical.

**RULE 4 CCR 723-40-4. SERVICE QUALITY.**

723-40-4.1 For purposes of compliance with the Commission's Rules Regulating Telecommunications Service Providers and Telephone Utilities (4 CCR 723-2), the reseller is a customer of the facilities-based telecommunications provider.

723-40-4.2 All providers of local exchange services, including resellers, shall comply with all Commission rules applicable to local exchange service providers.

723-40-4.3 The provider of local exchange services that directly interfaces with the end-user is obligated to serve that end-user according to the Commission's rules.

723-40-4.4 Services offered for resale by the facilities-based telecommunications provider must be provisioned at the same standard of quality as the services offered to its end-users.

**RULE 4 CCR 723-40-5. CONFIDENTIALITY.**

723-40-5.1 Each facilities-based telecommunications provider shall establish procedures to ensure that its personnel, including but not limited to those personnel who are involved in the provision of resold service and operational support to resellers, (1) hold as confidential all information about the reseller and its end-users obtained solely from providing services to a reseller and, (2) not utilize that information to compete against the reseller.

723-40-5.2 Each facilities-based telecommunications provider shall establish procedures to ensure that specific or summarized information about a reseller or its end-users obtained solely from providing services to the reseller is not used by the provider to (1) develop marketing strategy to compete with the reseller or, (2) develop, market or sell services that compete with the reseller.

723-40-5.3 Each facilities-based telecommunications provider and each reseller of its services shall develop mutually agreeable and reciprocal arrangements for the



protection of their respective customer proprietary network information.

**RULE 4 CCR 723-40-6.      TARIFF FILINGS.**

723-40-6.1      Except for those providers addressed in Rule 6.2, each facilities-based telecommunications provider shall file tariffs with the Commission implementing the resale of services according to these rules within 30 days of the effective date of these rules, or within 30 days of the date the facilities-based telecommunications provider receives operating authority.

723-40-6.2      Rural facilities-based telecommunications providers shall file tariffs with the Commission implementing the resale of requested services according to these rules within 30 days after such company has received a *bona fide* request by a reseller that has been granted operating authority within the facilities-based telecommunications provider's service territory and the Commission has determined that such request is not unduly economically burdensome and is technically feasible.

**RULE 4 CCR 723-40-7.      NEGOTIATION,      MEDIATION,      AND**  
**ARBITRATION.**

723-40-7.1      Nothing in Rule 6 shall be construed to limit a telecommunications provider's ability to reach a negotiated, mediated, or arbitrated agreement with respect to the rates, terms, and conditions associated with the resale of telecommunications services. Such agreements shall not be inconsistent with the rates, terms, or conditions contained in a telecommunications provider's currently effective tariff, and

will be processed according to the applicable Commission Rules of Practice and Procedure.

723-40-7.2 All agreements for resale of telecommunications services shall be submitted to the Commission for approval.

**RULE 4 CCR 723-40-8. REGULATION OF RESELLERS.**

723-40-8.1 All providers of residential basic local exchange services shall price such services to comply with statutory provisions of 40-15-502(3).

723-40-8.2 Until U S WEST Communications, Inc., is authorized to provide interLATA services in Colorado, or until February 8, 1999, whichever is earlier, a telecommunications provider that serves greater than 5 percent of the nation's presubscribed access lines may not jointly market, in Colorado, telecommunications exchange service obtained from U S WEST Communications, Inc., pursuant to 47 U.S.C. 251 (c)(4) with interLATA services offered by that telecommunications provider.

723-40-8.3 A reseller that obtains a telecommunications service at wholesale that, at retail is available only to a category of subscribers, is prohibited from offering such service to a different category of subscribers.

723-40-8.4 If the reseller is reselling basic local exchange service to a particular end-user, the end-user's bill must separately identify the Commission-approved price for basic local exchange service.

**RULE 4 CCR 723-40-9. DISPUTE RESOLUTION.** The Commission shall resolve disputes arising out of any provision of resold telecommunications services pursuant to these rules.

Attachment A  
Decision No. C96-351  
DOCKET NO. 95R-557T  
4 CCR 723-40  
Page 10 of 10

**RULE 4 CCR 723-40-10. VARIANCE AND WAIVER.** The Commission may permit a variance or waiver from these rules, if not contrary to law, for good cause shown and if it finds that compliance is impossible, impracticable or unreasonable.

(Decision No. C96-454)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED )  
RULES REGARDING AMENDMENTS TO )  
THE RULES OF PRACTICE AND )  
PROCEDURE, 4 CCR 723-1. )

DOCKET NO. 95R-608

COMMISSION DECISION GRANTING, IN PART, AND  
DENYING, IN PART, APPLICATIONS FOR  
RECONSIDERATION, REARGUMENT, OR REHEARING  
AND ADOPTING RULES

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Mailed Date: April 26, 1996  
Adopted Date: April 25, 1996  
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**I. BY THE COMMISSION:**

**A. Discussion**

1. This matter is before the Commission to consider an application for rehearing, reargument, or reconsideration of Decision No. C96-348 ("application"), which application was timely filed by U S WEST Communications, Inc. ("USWC"), on April 22, 1996.

2. Decision No. C96-348 was mailed on April 1, 1996, and amended Rules 25 and 55 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1; promulgated a new Rule 59 of the Rules of Practice and Procedure; and promulgated new Rules Concerning Payment of Monies by Providers of Local Exchange Telecommunications Service to Reimburse Funds Drawn from the Local Exchange Administration Fund, 4 CCR 723-50. The rules were appended to the decision.

3. In its application USWC raises only one issue for our consideration: the language of Rules 59(a), 59(b)(2), 59(b)(3),

and 59(d)(2) insofar as that language suggests or states that the Commission can grant a waiver or variance from statutory requirements.

4. As promulgated, Rule 59(a) reads:

(a) Applicability. This rule applies to requests made to the Commission seeking waiver of, or variance from, some or all provisions of substantive rules, requirements contained in Commission decisions and orders, and statutory provisions.

5. As promulgated, Rule 59(b)(2) reads:

(b)(2) Variance. Request to substitute the provision proposed by the person making the request for a provision contained in statute or in a Commission rule or order.

6. As promulgated, Rule 59(b)(3) reads:

(b)(3) Waiver. Request for release from one or more provisions contained in statute or in a Commission rule or order.

7. As promulgated, Rule 59(d)(2) reads:

(d)(2) Citation to the specific paragraph of the statute, rule, or Commission decision and order from which waiver or variance is sought;

8. In its application, USWC stated that the Commission lacks authority to grant waivers of, or variances from, statutory provisions. It requested, therefore, that the Commission strike the references to statute or statutory which appear in the cited portions of Rule 59 and rewrite those provisions of the Rule. USWC offered suggested language to amend Rule 59. Application at 4.

9. The Commission intends these rules to apply to any and all requests for waiver of, or variance from, a substantive requirement found in a Commission rule; from a substantive requirement found in a Commission decision or order; and from those

statutory provisions which provide the Commission with discretion to modify the requirements imposed on utilities.<sup>1</sup> We further intend that Rule 59 should apply to requests for waiver or variance which are made outside the context of a pending Commission docket.<sup>2</sup>

10. After review, we agree that the language of Rules 59(a), 59(b)(2), and 59(b)(3) incorporates too much. As promulgated, the cited Rules appear to include statutory provisions which the Commission has no discretion to modify. We agree with USWC that, as to such statutory provisions, we cannot grant a waiver or variance and that the Rules as promulgated by Decision No. C96-348 are too broad. Therefore, we will grant USWC's application with respect to Rules 59(a), 59(b)(2), and 59(b)(3).

11. In its application USWC proposed alternative language for the portions of Rule 59 which reference the statute or statutory provisions. We find USWC's language to be overly inclusive because it eliminates all reference to the statute, even to those statutory provisions under which we have discretion. We find USWC's proposed language to be contrary to what we intend Rule 59 to do (See discussion in paragraph 9, above).

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<sup>1</sup> For example, and without limitation, see § 40-3-104(2), C.R.S., which grants the Commission the discretion to allow changes in rates on less than statutory notice.

<sup>2</sup> We expect requests for waiver or for variance which pertain to pending dockets to be filed in the pending dockets. Thus, for example and without limitation, a request for enlargement of time within which to file an application for reconsideration, reargument, or rehearing would be made by motion in the docket to which it pertains. Rule 59 would not be used.

12. Accordingly, we will adopt the following language and substitute it for the language of the Rules as promulgated by Decision No. C96-348:

**Rule 59(a).** Applicability. This rule applies to requests made to the Commission seeking waiver of, or variance from, some or all provisions of (1) substantive rules of the Commission; (2) substantive requirements contained in Commission decisions and orders; and (3) statutory provisions in which the Commission is granted discretion to modify the requirements imposed on utilities, except statutory provisions pertaining to exceptions to recommended decisions and applications for reconsideration, reargument, or rehearing.

**Rule 59(b)(2).** Variance. Request to substitute the provision or provisions proposed by the person making the request for one or more provisions of one or more of the following: (A) substantive rules of the Commission; (B) substantive requirements contained in Commission decisions and orders; or (C) statutory provisions in which the Commission is granted discretion to modify the requirements imposed on utilities, except statutory provisions pertaining to exceptions to recommended decisions and applications for reconsideration, reargument, or rehearing.

**Rule 59(b)(3).** Waiver. Request for release from one or more provisions contained in one or more of the following: (A) substantive rules of the Commission; (B) substantive requirements contained in Commission decisions and orders; or (C) statutory provisions in which the Commission is granted discretion to modify the requirements imposed on utilities, except statutory provisions pertaining to exceptions to recommended decisions and applications for reconsideration, reargument, or rehearing.

13. In view of our decision with respect to Rules 59(a), (b)(2), and (b)(3), we will deny USWC's application with respect to Rule 59(d)(2). Rule 59(d)(2) identifies one piece of information which must be provided as part of a request for waiver or for

variance. As we have discussed above, a request may be made for a waiver of, or for a variance from, a statutory provision under certain circumstances. It is appropriate, therefore, to retain the reference to statute in Rule 59(d)(2). Accordingly, we will deny USWC's application concerning Rule 59(d)(2).

14. We are convinced that the changes in Rules 59(a), 59(b)(2), and 59(b)(3) adopted in this Decision are appropriate. The changes in language will ensure that Rule 59, Petitions and Motions for Waiver of, or Variance from, Rules or Requirements, will be applied in such a way as to achieve our objectives in an orderly and timely fashion. The Rules contained in this Decision are appropriate for adoption.

## **II. ORDER**

### **A. The Commission orders that:**

1. The application for rehearing, reargument, or reconsideration filed by U S WEST Communications, Inc., should be, and hereby is, granted in part and denied in part, consistent with the discussion above.

2. The language of Rules 59(a), 59(b)(2), and 59(b)(3) as set out in this Decision should be, and hereby is, adopted and substituted for the language of Rules 59(a), 59(b)(2), and 59(b)(3) as it appeared in the rules accompanying Decision No. C96-348.

3. This order shall become effective 20 days following the Mailed Date of this decision in the absence of filing of an application for reconsideration, reargument, or rehearing. In the event an application for reconsideration, reargument, or rehearing



to this decision is timely filed, and in the absence of further order of this Commission, this Order of adoption shall become final upon a Commission ruling denying any such application.

4. Within 20 days of final Commission action, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Colorado Attorney General regarding the legality of the rules.

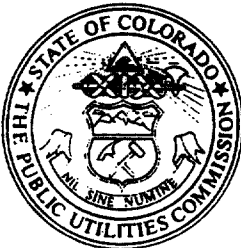
5. The adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above-referenced opinion of the Colorado Attorney General.

6. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for reconsideration, reargument, or rehearing begins on the first day following the effective date of this Order.

7. This Order is effective on its Mailed Date.

B. ADOPTED IN OPEN MEETING April 25, 1996.

( S E A L )



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ROBERT J. HIX

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VINCENT MAJKOWSKI

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Commissioners

ATTEST: A TRUE COPY

COMMISSIONER CHRISTINE E. M. ALVAREZ  
RESIGNED EFFECTIVE APRIL 5, 1996.

*Bruce N. Smith*

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Bruce N. Smith  
Director

(Decision No. C96-450)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

\* \* \*

IN THE MATTER OF PROPOSED )  
RULES REGARDING AMENDMENTS TO )  
THE RULES REGULATING )  
TELECOMMUNICATIONS SERVICE )  
PROVIDERS AND TELEPHONE )  
UTILITIES, 4 CCR 723-2. )

DOCKET NO. 95R-609T

COMMISSION DECISION GRANTING, IN PART,  
AND DENYING, IN PART,  
APPLICATIONS FOR REHEARING, REARGUMENT,  
OR RECONSIDERATION AND ADOPTING RULES

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Mailed Date: April 26, 1996  
Adopted Date: April 25, 1996  
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**I. BY THE COMMISSION:**

**A. Statement**

1. This matter comes before the Colorado Public Utilities Commission (the "Commission") for consideration of the various applications for rehearing, reargument, or reconsideration ("RRR") of Decision No. C96-349, issued on April 1, 1996. In that decision, we adopted, subject to applications for RRR, rules amending and adding to the Rules Regulating Telecommunications Service Providers and Telephone Utilities (the "Telephone Rules"), 4 Code of Colorado Regulations 723-2. Significantly, the rules adopted in Decision C96-349 altered the Commission's line extension policy and the basic telephone service standards and added a rule concerning changes to telephone presubscription.

2. Pursuant to § 40-6-114(1), C.R.S., several parties filed applications for RRR as to various rule paragraphs adopted in Decision C96-349. These parties are: AT&T Communications of the Mountain States, Inc. ("AT&T"); the Colorado Independent Telephone Association ("CITA"); MCI Telecommunications Corporation ("MCI"); and the Office of the Consumer Counsel ("OCC").

3. Now being duly advised in the premises, we will grant, in part, and deny, in part, the applications for RRR.

## II. DISCUSSION

### A. Introduction

The applications for RRR suggest changes to numerous rules and/or rule paragraphs. This decision will individually discuss each of these rules and/or rule paragraphs. Those rules to which changes have been made are set forth in Attachment A to this Decision.

### B. Line Extension Policy (Rule 5.4 of the Telephone Rules)

1. CITA, in its application for RRR, argues that the funding mechanisms presently available to small telecommunications service providers do not fully compensate them for the investment in high cost loops and that the rule as adopted places an unreasonable burden on small telecommunications service providers to come up with capital to construct line extensions when the investment could become stranded. CITA then proposed changes to reflect these arguments.

2. The Commission finds that the proposals suggested by CITA do not properly serve the goals set forth in Decision No.

C96-349 which adopted this Rule 5.4. Therefore, we will deny CITA's application for RRR in this respect.

**C. Purchase of Indebtedness (Rule 9.3.3 of the Telephone Rules)**

As stated in Decision No. C96-349, this rule ensures that an end-user will not be denied the right to change telecommunications service providers because of an unpaid or contested bill with its previously selected telecommunications service provider. CITA's application for RRR expresses concern as to a future ability to collect deposits. The Commission finds that its existing rules on deposits (Rule 8 of the Telephone Rules) are not affected by Rule 9.3.3 and adequately govern this subject. Thus, we will deny CITA's application for RRR as it pertains to Rule 9.3.3.

**D. Basic Telephone Service Standards (Rule 17 of the Telephone Rules)**

Rule 17.1.7 sets forth the basic service standards as they pertain to the provision of backup power to support existing basic service lines that utilize a traditional ringer in the event of a commercial power failure. OCC filed for RRR as to this rule paragraph because it was limited only to alternating current (AC) power failures and because it only required backup power to be provided for a maximum of eight hours. The Commission agrees with OCC and finds the OCC's suggestions are not overly burdensome on telecommunications service providers; however, we also find that OCC's proposed language needs to be amended to refer to the

restoration of "commercial" power. Thus, we will grant, with clarification, OCC's application for RRR as to Rule 17.1.7.

**E. Changing Provider/Carrier Presubscription (Rule 25 of the Telephone Rules)**

1. OCC suggests generally that the acronyms used throughout this rule (*i.e.*, BLEP, IIIXC, CSBLEP, CSIIIXC, and provider/carrier)<sup>1</sup> are confusing to the reader and make the rule difficult to understand. As a result, OCC suggests that the rule be introduced by a definitional paragraph defining a basic local exchange provider and an intrastate intraLATA interexchange carrier as simply a provider for purposes of this rule. The Commission disagrees that OCC's proposed modification makes clear the carrier or provider to which the rule sentence is referring. Thus, the Commission will deny OCC's application for RRR to this aspect of Rule 25.

2. Additionally, as a result of OCC's application for RRR, the Commission finds that it has unintentionally utilized the term "subscriber" in much of Rule 25 when the term "customer" would be more appropriate. Thus, the Commission has substituted "customer" for "subscriber" wherever appropriate in the attached rules.

3. Rule 25 specifically addresses the procedures by which a provider/carrier change be accomplished. One of the permissible procedures involves the sending of a confirmation

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<sup>1</sup> These acronyms, respectively, stand for basic local exchange provider, intrastate intraLATA interexchange carrier, customer-selected basic local exchange provider, and customer-selected intrastate intraLATA interexchange carrier.

package to the customer, which package includes a postcard which can be used to deny, cancel, or confirm the change order. In Decision No. C96-349, the Commission adopted a rule which required the customer to return the postcard in order for the change in CSBLEP and/or CSIIIXC to be effected.

4. AT&T and MCI correctly point out, as they did in their comments submitted prior to the issuance of Decision No. C96-349, that our rule's postcard requirement differs from that adopted by the Federal Communications Commission ("FCC"). The pertinent FCC rule allows the change order to occur unless the customer returns the postcard signalling its desire to cancel the change order. In Decision No. C96-349, we found this difference was not significant. The arguments put forth by AT&T and MCI do not convince us that the rule as adopted in Decision No. C96-349 is unjust. Therefore, we will deny the applications for RRR of AT&T and MCI with respect to Rules 25.1.4 and 25.1.4.8.

5. Next, AT&T suggests a modification of the language contained in Rule 25.1.4.9. The Commission finds that the language it adopted in Decision No. C96-349 is sufficient, and, therefore, will deny this aspect of AT&T's application for RRR.

6. Rule 25.3 explains the concept of "freezing" one's telecommunications service provider. OCC argues that the language in Rule 25.3.1, as adopted in Decision No. C96-349, is unclear and offers a proposed modification. The Commission disagrees and will deny this portion of OCC's application for RRR.

7. As is apparent in Rule 25.3.2, the Commission has found that some customer education with respect to freezing is necessary to serve the public interest. OCC and MCI believe that the rule should refer not only to the effects of freezing but also to the option to freeze. The Commission agrees and will grant OCC's application for RRR as to Rule 25.3.2, except as to those edits which delete reference to CSBLEPs and CSIIIXCs, and will partially grant MCI's application for RRR as to this rule paragraph. AT&T and MCI suggest that Rule 25.3.2 also contain language specifically prohibiting education at a time other than upon initiation of service. The Commission finds that the language proposed by AT&T and MCI is too restrictive. Thus, the Commission will deny this aspect of the applications for RRR filed by AT&T and MCI.

8. Rule 25.3.3 sets forth a tariff filing requirement for telecommunications service providers concerning a description of the customer education concerning freezes. OCC proposes some modified language which the Commission has accepted after further modification. AT&T argues that a tariff is an inappropriate place for a description of a customer education program. The Commission disagrees and finds that tariffs have frequently been used to set forth descriptions of various forms of consumer notice, including explanations as to deposits and service disconnection. Thus, with respect to Rule 25.3.3, the Commission will make a clarification in response to OCC's application for RRR and will deny that of AT&T to the extent that AT&T recommends deletion of Rule 25.3.3.

9. Finally, applications for RRR were received as to most of Rule 25.4, which concerns enforcement against unauthorized changes to a customer's presubscribed CSBLEP and/or CSIIIXC.

10. First, the Commission omitted, in the rules adopted in Decision No. C96-349, to refer to the "Colorado Revised Statutes" in Rule 25.4.1 and therefore adds this language.

11. Second, OCC's discussion on Rule 25.4.2 leads us to conclude that it was poorly written in that it attempted to speak to both the present, when a customer's BLEP and IIIXC must be the same provider/carrier, and the future, when this will not be the case. As a result, the Commission finds that Rule 25.4.2 needs to be broken into various rule paragraphs with a specific paragraph referring to the present situation which will become void upon the Commission authorizing BLEPs and IIIXCs to be different provider/carriers and then a paragraph referring to the future. In so reorganizing Rule 25.4.2, the Commission believes it has addressed the concern raised by OCC while rejecting OCC's proposed language change.

12. Third, Rule 25.4.6 (numbered 25.4.3 in Attachment A to Decision No. C96-349), which provides for a one month refund, was addressed by all four applications for RRR. OCC suggests that the act causing a refund should not be a request for a change, but rather a violation of the verification procedures set forth in Rule 25.1. The Commission will adopt this change. OCC then suggests that the refund cover all months while service is provided by an unauthorized BLEP and/or IIIXC and that if a refund is not



forthcoming, then the customer shall be permitted to withhold payment for up to six months. The Commission finds that these suggestions would not serve the overall public interest and will deny OCC's application for RRR in this respect. AT&T and MCI suggest the opposite of that proposed by OCC. They suggest that the one month refund should be reduced to that portion of the charge by the unauthorized BLEP/IIIXC which is greater than that the customer would have paid to its CSBLEP/CSIIIXC. The Commission finds that, if adopted, there would be no incentive for provider/carriers to follow these rules, and, therefore, we will deny their RRR as to this point. CITA recommends adding language to include indemnification, holding harmless, and attorney's fees in addition to the one month refund. The Commission will not accept this CITA proposal.

13. Fourth, and last, CITA recommends the inclusion of an additional rule which would permit a CSBLEP/CSIIIXC to contact its customer to verify that the customer had in fact requested a provider/carrier change. This rule proposal would only promote harassment of customers, and we will not adopt it.

### III. ORDER

#### A. The Commission Orders That:

1. The rule changes and clarifications described above and set forth in Attachment A are adopted.